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RULES OF WAR.—CAPTURE UPON THE SEA.

THAT war upon the ocean has a character of its own no publicist denies. Now and then a spasmodic protest is made against conditions which produce the fact, but it is probable that such will remain ineffective.

The sea is so absolutely different from the land that it is hopeless to make every rule equally applicable to each. Walled towns and fortified places in the interior of a country may bear some analogy to the armed ships of a nation, but the former are within a territory which the citizens of a belligerent possess for tillage and support in time of peace as well as in war; the latter are on an unstable element to which property rights cannot be acquired, and which is equally the high road of all nations. Here is a wide difference amply sufficient to explain the special severities of war upon the sea.

Again, when the moment of hostilities arrives, it becomes the endeavor of each belligerent to work as much harm to the other as possible, certain limitations being recognized by both. In order to do this, the country taking the offensive seeks on land to cut the enemy off from his supplies, and in every way to exhaust his powers of defence. Such activities would be handicapped if the rules of war forbade any interference with the commerce of belligerents. The constant inflow of supplies from the coast cities would be sure to make good any disasters caused by victorious armies in the interior. Therefore, since the earliest times it has been understood that, in case of war, private ships belonging to the enemy were lawful prey for belligerent cruisers.

Fortunately, many of the severities formerly practised upon the sea have been done away with, and also such application of rational law as was illogical and barbarous. Meanwhile, the rules cited may be considered at present as endorsed by general consent.

1. Public vessels of a belligerent can be seized wherever found, either on the high seas or in the ports and harbors of the enemy; although, for some time, there were those who gave as exceptions the case of warships in the rivers and estuaries of the country under whose flag they sailed.

With public ships may well be catalogued all auxiliaries, whether despatch or supply boats. The question of hospital ships or repair ships does not seem to have been finally settled. Undoubtedly, the latter will be no exception to the rule, while the former may be. It certainly seems reasonable that a ship supplied with all the tools and machinery which may be needed to put an ironclad into fighting trim, would be as well fitted to work disaster to the enemy, if indirectly, as a squadron of battleships.

There are, however, two well settled exceptions to this rule, one being that of cartel ships, and the other of ships engaged in public scientific expeditions, where the same are in no way charged with operating in a manner which is or may be construed as hostile to the enemy.

2. Private vessels belonging to the citizens of a belligerent may be captured wherever found, as long as the laws of neutral nations touching surrounding waters are respected.

Naturally, doubt often arises as to whether or not merchant vessels belong to the enemy or otherwise. In order to ascertain the true character of a ship, war vessels are recognized by International Law as having the right of search, and may command a suspected vessel to lay to until her papers may be examined. No objection can be made to such forcible de-

tention, even if the ship be neutral. Any mistake made by the commanding officer will be rectified by his government; at all events, it will later be a good cause for complaint. Meanwhile, if right of search were not granted, it would be impossible for belligerents to interfere with the commerce of enemies.

It is to be noted that a friendly or neutral vessel that habitually uses an enemy's flag is in peril, just like a citizen who takes up his abode in an enemy's country.

When hostilities commence time will probably be given merchantmen to clear from the enemy's ports in which they may happen to belying. This is not a matter of right, but it is recognized as an act of comity and is customary at present.

As exceptions to the foregoing rule under which enemy's shipping can be seized, we may mention fishing boats, whose nets and trawls lie off the coast; possibly private hospital ships belonging to charities and, as already noted, ships sent out on scientific expeditions by societies. Again, it often happens that ships are driven into port by stress of weather. In this case it is suggested by some that they shall be accorded different treatment, which is generally prompted by the generous feelings of mankind in hours of distress. If this is true touching storm beaten ships seeking harbor, it certainly should apply to ships that are wrecked upon an enemy's coast.

Previous to the Declaration of Paris the practice of nations differed—little respect being shown to neutrals carrying enemy's goods and less to neutral goods upon hostile ships. The United States having placed itself upon record, in the beginning of its existence as a nation, as a champion of neutral rights, has, through its different agencies, sought to bring about a recognition of the principles which are at present generally accepted. To day the goods of a neutral may not be touched by a belligerent, unless they are contraband of war, wherever found, and enemies' goods are equally safe if put in neutral bottoms.

There might at this point be some discussion as to neutrals and the rights of neutrals, but the subject is so broad that it cannot be satisfactorily treated incidentally.

It may be well to note, regarding the right of search, that any interference with a nation's vessel or man-of-war belonging to a neutral would be *casus belli*.

Often it happens that a war ship takes a private vessel belonging to the enemy but is unable to hold it, owing to the appearance of the enemy's fleet or for some other reason. In this case, ransom may be taken, the private vessel giving hostages to assure the captor that it will proceed on its way to port, taking a definite course. If the course is not followed, the ship may properly be recaptured by another cruiser, in which case adjustment will be made with the vessel that first captured the prize. The bill given for the ransom should be honored on presentation.

As a general rule, nations forbid their cruisers to destroy merchantmen at sea if it is possible to bring them before a prize court. The reason for this lies in the fact that the commanding officer may have made a mistake, and in order to have his action ratified the capture should be brought before a properly constituted tribunal.

No objection can be made by a neutral or friendly vessel to being chased or fired upon by the enemy if they exhibit wrong colors. A spoliation of papers is good ground for capture.

Notable historical exceptions to the action of governments are furnished by the United States in the war with England, where orders were given to commanders to demolish the ships which they could not expect to save without risking their own ships. This course was further followed by the Confederate States during the Civil War.

It often happens that a vessel captured upon the high sea is retaken by a friendly cruiser. To whom does the property then belong?

This leads to a brief discussion of what is referred to by writers as *jus postliminii*, a term taken from the Roman law, which in many ways has done pioneering work for International Law. The *jus postliminii* has to do with the right of the original owner of the property after recapture. In order to ascertain this, it is necessary to trace the vessel's history through the time which has expired since it first came into the enemy's hands.

By common consent of the powers, a vessel after it has been twenty-four hours a prize becomes the property of the belligerent State that has captured it. This is clearly shown by rules which grant larger salvage to rescuers who retake the vessel before such a period has elapsed than afterwards. Yet it is safe to say that the title does not become absolutely the enemy's until a prize court has passed judgment, and that, if a recapture be made before the vessel is regularly condemned, the party whose property was thus wrested away may upon payment of salvage demand that which is his. Meanwhile, an adjudication of the court which finds the vessel to be a lawful prize, should certainly cut off any lingering title that the original owner may have possessed.

A word in closing as to prize courts. These represent government; and, being duly constituted, pass upon the acts of national officers who, in discharge of their duties, have apprehended vessels supposed to be the property of the enemy. The findings of such courts are subject to appeal, but, in spite of a probable bias in every case, it is seldom that they are in error, owing to the judicial temper of the trained men commonly selected to fill such positions.

If the captain of a warship, therefore, makes a mistake, there is every reason to believe that the wrong will be righted when the case reaches the prize court. If not, the responsibility lies with the nation, and the neutral whose rights have been invaded may properly demand indemnity and use force to procure the same. This, however, rarely happens. The higher courts of states passing upon these matters have as a rule consisted of eminent jurists whose wisdom and integrity were beyond suspicion; and the endorsement by such of any capture carries a weight that is convincing, especially as it is recognized that any gross partiality or unfairness shown by the bench would react prejudicially, besides tending to seriously diminish the influence of such courts, which, at present, to a certain extent, perform the duties of an international council.

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CASH VERSUS GLORY.

AN ordinary service to mankind is usually paid for at current rates in legal tender. An extraordinary service, not involving the element of heroism, is rewarded by both legal tender and more or less fame. The highest of